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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,050	11/14/2003	Richard Parker Evans	040133-000100US	3217
20350 7590 01/16/2008 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER PRONE, CHRISTOPHER D	
			ART UNIT 3738	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/714,050

Applicant(s)

EVANS, RICHARD PARKER

Examiner

Christopher D. Prone

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 10, 13-18, and 20 are rejected under 35 U.S.C. 103 as being unpatentable over USPN 5,123,927 Duncan in view of USPN 5,639,279 Burkinshaw et al.

Duncan discloses the invention substantially as claimed being a method for treating an infected area of a knee of a joint comprising the steps of: getting access to the implant area, inserting a tibia component using an antibiotic-impregnated material, forming a femoral component with a smooth articulating surface made of a antibiotic-impregnated material, wherein the femoral component is formed by mixing a bone cement powder with a powdered antibiotic pressed into a femoral shaped mold and then trimming excess material from the mold, attaching the femoral component, and interfacing the tibial component with the femoral component thereby maintaining the knee joint space (outlined in figure 1 of Duncan).

However, Duncan does not disclose that the tibial component comprises an elongated stem, a posterior stabilization post, or that it is constructed of polyethylene.

Burkinshaw teaches the use of a knee implant comprising a femoral component (10) with a central recess (28) and a smooth surface 51 that does not penetrate into the

femur, a polyethylene tibial component (60) having a central stem (80) extending into the tibia and a posterior stabilizing portion (72) in the same field of endeavor for the purpose of providing the implant with increased gripping retention and stability.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine methods of manufacturing and implanting taught by Duncan with the polyethylene tibial and femoral structures components taught by Burkinshaw in order to provide the implant with increased gripping retention and stability.

Claims 8, 9, and 19 are rejected under 35 U.S.C. 103 as being unpatentable over the combination of Duncan and Burkinshaw disclosed above and further in view of USPN 5,980,573 Shaffner.

The combination discloses the invention substantially as claimed being a method for treating an infected knee joint. However, the combination does not disclose re-accessing the implant area after treating the infection, removing the tibial and femoral components, and then implanting a permanent prosthesis.

Shaffner teaches a method for fighting infection and maintaining spacing in a prosthesis implant area comprising inserting a temporary antibiotic impregnated prosthesis for an extended period of time, removing the temporary prosthesis, and inserting a permanent prosthesis in the same field of endeavor for the purpose of providing a temporary implant that prevents/eliminates infection at the implant site that

will maintain the function and spacing of the joint allowing the user to receive a permanent implant in the future.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the method of replacing the antibiotic implant with a permanent implant as taught by Shaffner with the device of the combination in order to provide an infection free implant site and a second permanent implant.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-10 and 13-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

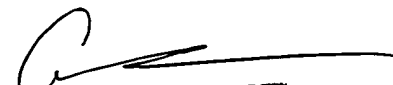
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone  
Examiner  
Art Unit 3738

  
CDP

  
**CORRINE McDERMOTT**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3738**